Supreme Court, U.S.
FILED
MAY 1 1995
OFFICE OF THE CLERK

No. 94-1453

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

D. GRANT PEACOCK,
Petitioner,
v.
JACK L. THOMAS,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

J. KENDALL FEW
(Counsel of Record)
JOHN C. FEW
MARGARET A. CHAMBERLAIN
FEW & FEW, P.A.
Post Office Box 10085
850 Wade Hampton Boulevard
Greenville, SC 29603
(803) 232-6456

JAMES R. GILREATH
Post Office Box 2147
110 Lavinia Avenue
Greenville, SC 29602
(803) 242-4727

Attorneys for Respondent Jack L. Thomas

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED FOR REVIEW

1. May a federal court assert ancillary jurisdiction over a cause of action to pierce the corporate veil under ERISA?

2. May a federal court apply the federal common law veil-piercing rule in ERISA actions to enforce a judgment?

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	4
REASONS FOR DENYING THE PETITION	5
I. THE FOURTH CIRCUIT'S DECISION IS NOT IN CONFLICT WITH THIS COURT'S DECISIONS IN *BEECHER* OR *KOKKONEN*	5
II. THERE IS NO MEANINGFUL SPLIT IN THE CIRCUITS CONCERNING FEDERAL ANCILLARY JURISDICTION OVER ACTIONS TO PIERCE THE CORPORATE VEIL IN ORDER TO COLLECT PRIOR JUDGMENTS UNDER ERISA	7
III. IT WOULD BE PREMATURE FOR THIS COURT TO ADDRESS THE ISSUE OF ANCILLARY JURISDICTION OVER AN ACTION TO PIERCE THE CORPORATE VEIL IN ORDER TO COLLECT A PRIOR JUDGMENT UNDER ERISA	9
IV. THE FOURTH CIRCUIT'S DECISION TO APPLY FEDERAL COMMON LAW VEIL-PIERCING STANDARDS IS NOT IN CONFLICT WITH THIS COURT'S DECISIONS IN *MERTENS* OR *MACKEY*, NOR IS THERE CONFUSION ABOUT VEIL-PIERCING UNDER ERISA IN THE CIRCUIT COURTS	10
CONCLUSION	12

TABLE OF AUTHORITIES

Cases — Page

Alman v. Danin, 801 F.2d 1 (1st Cir. 1986) 4, 12
Argento v. Village of Melrose Park, 838 F.2d 1483 (7th Cir. 1988) 3
Berry v. McLemore, 795 F.2d 452 (5th Cir. 1986) 7, 8
Blackburn Truck Lines v. Francis, 723 F.2d 730 (9th Cir. 1984) 9
Connors v. P & M Coal Company, 801 F.2d 1373 (D.C. Cir. 1986) 11
Fidelity & Casualty Co. v. Reserve Ins. Co., 596 F.2d 914 (9th Cir. 1979) 7
H. C. Cook Co. v. Beecher, 217 U.S. 497, 30 S. Ct. 601 (1910) 3, 4, 5, 7, 8
International Brotherhood of Painters and Allied Trades Union v. Kracher, 856 F.2d 1546 (D.C. Cir. 1988) 11
Kokkonen v. Guardian Life Insurance Co., 114 S. Ct. 1673 (1994) 4, 6, 7
Mackey v. Lanier Collection Agency & Service, 486 U.S. 825, 108 S. Ct. 2182 (1988) 3, 5, 10, 11
Manway Constr. Co. v. Housing Auth. Of the City of Hartford, 711 F.2d 501 (2d Cir. 1983) 9
Mertens v. Hewitt Associates, 113 S. Ct. 2063 (1993) 4, 10
National Westminster Bank U.S.A. v. Cheng, 751 F. Supp. 1158 (S.D.N.Y. 1990) 7, 8, 9
Operating Engineers Pension Trust v. Reed, 726 F.2d 513 (9th Cir. 1984) 11, 12
Redding Ford v. California State Bd. Of Equalization, 722 F.2d 496 (9th Cir. 1983) 7
Sandlin v. Corporate Interiors, Inc., 972 F.2d 1212 (10th Cir. 1992) 7, 8
Sederquist v. Court, 861 F.2d 554 (9th Cir. 1988) .. 7
Skevofilax v. Quigley, 810 F.2d 378 (3d Cir. 1987) (*en banc*), *cert. denied*, 481 U.S. 1029, 107 S. Ct. 1956 (1987) 3
Thomas v. Peacock, 39 F.3d 493 (4th Cir. 1994) .. 2, 3, 4, 6
Thomas v. Tru-Tech, Inc., 900 F.2d 256 (4th Cir. 1990) 2

TABLE OF AUTHORITIES—Continued

Page

Thomas v. Tru-Tech, Inc., No. 87-2243-3, 1988 U.S. Dist. LEXIS 15929, 1988 WL 212511 (D.S.C. Nov. 28, 1988) 1
Town of Brookline v. Gorsuch, 667 F.2d 215 (1st Cir. 1981) 4

Statutes

28 U.S.C. § 1367 ..... 4, 9, 10, 12
29 U.S.C. § 1132(a) (1) (B), (d) 3
29 U.S.C. § 1001, *et seq.* 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-1453

D. GRANT PEACOCK,

Petitioner,

v.

JACK L. THOMAS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

This is a lawsuit brought by the Respondent, Jack L. Thomas ("Thomas") to pierce Tru-Tech, Inc.'s corporate veil in order to reach the Petitioner, D. Grant Peacock ("Peacock"), an officer and shareholder of Tru-Tech.

Thomas, a former employee of Tru-Tech, originally brought a class action suit against Tru-Tech and Peacock under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, *et seq.* The district court ruled in favor of the plaintiff class as against Tru-Tech but held Peacock was not liable as a plan fiduciary. *Thomas v. Tru-Tech, Inc.*, No. 87-2243-3, 1988 U.S. Dist. LEXIS 15929, 1988 WL 212511 (D.S.C. Nov. 28, 1988). The United States Court of Appeals for the

Fourth Circuit affirmed the district court's opinion. *Thomas v. Tru-Tech, Inc.*, 900 F.2d 256 (4th Cir. 1990) (unpublished disposition; full text at 1990 WL 48865). Thomas then commenced this current litigation against Peacock individually, seeking to pierce Tru-Tech's corporate veil.

Thomas sued Peacock individually because Peacock and his attorney, Alan H. Finegold, schemed to siphon off Tru-Tech's assets in order to prevent the collection of the judgment against Tru-Tech. Money was transferred from Tru-Tech to Peacock's wife, to Peacock's lawyer and to Peacock's business, Peacock, Williams & Company ("P,W & C"). At a Tru-Tech Board meeting held on March 6, 1989, Peacock agreed to pay $130,000 of Tru-Tech funds to P,W & C. Although Peacock claimed that this transfer was to repay P,W & C for money paid to Tru-Tech's president to manage Tru-Tech's affairs, the district court noted that the evidence showed that P,W & C had previously written off that debt. On July 1, 1989, the Tru-Tech Board of Directors, of which Peacock was by then the sole member, approved a transfer of $47,000 to P,W & C. In February of 1990, Peacock officially resigned as a Director of Tru-Tech, but he continued to sign checks drawn on Tru-Tech's bank accounts for months to come. Based on transfers of funds such as the ones described, the district court found that Peacock failed to observe the corporate form and depleted Tru-Tech's assets in order to avoid collection of the Thomas judgment and in order to enrich himself. The district court ruled that it was proper for Thomas to pierce Tru-Tech's corporate veil in order to reach Peacock. Peacock appealed to the Fourth Circuit which affirmed the district court's decision. *Thomas v. Peacock*, 39 F.3d 493 (4th Cir. 1994).

In a unanimous opinion written by Judge Donald Russell and joined by Judge Widener and Senior Judge Chapman, the Fourth Circuit held that the federal court had subject matter jurisdiction over the case because it

arose under ERISA. Furthermore, the Court ruled that the district court did not err by applying a federal common law standard for piercing the corporate veil.

The Fourth Circuit reasoned that the equitable doctrine of piercing the corporate veil was "necessarily subsidiary to some primary cause of action, ... Thus, . . . not a mere procedural rule relating to 'how' a judgment is to be enforced, but is, rather, a substantive rule of liability." 39 F.3d at 500. The court took great pains to ensure that its ruling was in compliance with *H. C. Cook Co. v. Beecher*, 217 U.S. 497, 30 S. Ct. 601 (1910). Thomas' effort to pierce the corporate veil was not found to be independent of his prior litigation and, thus, not in conflict with *Beecher*. 39 F.3d at 501. Some circuits have based federal ancillary jurisdiction in veil-piercing actions on the proposition that this Court's decision in *Beecher* may lack continuing vitality. *Argento v. Village of Melrose Park*, 838 F.2d 1483 (7th Cir. 1988); *Skevofilax v. Quigley*, 810 F.2d 378 (3d Cir. 1987) (*en banc*), *cert. denied*, 481 U.S. 1029, 107 S. Ct. 1956 (1987). The Fourth Circuit, by contrast, did not challenge *Beecher* but simply distinguished it on its facts. Whereas Thomas alleges that Peacock wrongfully ignored corporate formalities and improperly transferred funds in an effort to evade the judgment against Tru-Tech, *Beecher* involved a suit to enforce a judgment against officers of a corporation who were acting within their legal capacity. 39 F.3d at 501.

After establishing that jurisdiction was proper in federal court, the Fourth Circuit then ruled that applying the federal common law rule for piercing the corporate veil was appropriate in ERISA cases. While recognizing that *Mackey v. Lanier Collection Agency & Service*, 486 U.S. 825, 108 S. Ct. 2182 (1988), held that "ERISA does not provide an enforcement mechanism for collecting judgments won" in suits brought by plan beneficiaries, pursuant to ERISA § 502(a)(1)(B), (d), 29 U.S.C. § 1132 (a)(1)(B), (d), against ERISA benefit plans, the Fourth

Circuit noted that piercing the corporate veil is not merely a mechanism for collecting a judgment. 39 F.3d at 503. Because Thomas seeks to pierce the corporate veil to determine who is liable under ERISA, the court held that ERISA preempts state law rules of veil-piercing. *Id.* Therefore, the federal common law rule of veil-piercing must apply in ERISA actions. The Fourth Circuit adopted the rule articulated by the First Circuit in *Alman v. Danin*, 801 F.2d 1 (1st Cir. 1986),[1] finding its reasoning persuasive and in accordance with the veil-piercing rules followed in other circuits. 39 F.3d at 503.

For these reasons, the Fourth Circuit found that the district court had properly asserted ancillary jurisdiction and had properly applied the federal common law veil-piercing standard when piercing the corporate veil under ERISA.

SUMMARY OF ARGUMENT

First, the Fourth Circuit's decision is in keeping with this Court's decisions in *Beecher* and *Kokkonen v. Guardian Life Insurance Co.*, 114 S. Ct. 1673 (1994), over the scope of federal ancillary jurisdiction. In addition, there is no split among the circuits as to the very narrow question of ancillary jurisdiction over an action to pierce the corporate veil in order to collect a judgement in an ERISA case. Simply put, it would be premature for this Court to grant Peacock's petition because so few courts have addressed this narrow issue. Nor has the impact of 28 U.S.C. § 1367 been felt on this issue. So even if this Court disagrees and finds a split among the circuits, that split may disappear once courts have an opportunity to apply and interpret § 1367.

Second, the Fourth Circuit's decision is not contrary to this Court's decisions in *Mertens v. Hewitt Associates*, 113

[1] In *Alman*, the First Circuit reasoned that because ERISA does not attach great weight to corporate form, the "corporate entity may be disregarded in the interests of public convenience, fairness and equity." 801 F.2d at 3 (quoting *Town of Brookline v. Gorsuch*, 667 F.2d 215, 221 (1st Cir. 1981)).

S. Ct. 2063 (1993) or *Mackey*. The equitable doctrine of piercing the corporate veil is a substantive rule of liability, not a mere collection action. Furthermore, there is no confusion among the circuit courts as to piercing the corporate veil in ERISA cases. The petitioner sees confusion and discord where none exists. The Court should deny the petition for a Writ of Certiorari.

REASONS FOR DENYING THE PETITION

I. THE FOURTH CIRCUIT'S DECISION IS NOT IN CONFLICT WITH THIS COURT'S DECISIONS IN *BEECHER* OR *KOKKONEN*.

The Fourth Circuit found that it had ancillary jurisdiction over Thomas' attempt to pierce the corporate veil. This decision is not in conflict with *Beecher*. In *Beecher*, a corporate patent holder brought a patent infringement action in federal court. While the suit was pending, the directors of the defendant corporation voted to continue sales despite allegations in the lawsuit that the sales were in violation of the plaintiff's patent. Although winning the patent infringement case, plaintiff was unable to collect from the defendant corporation because it had become insolvent. Plaintiff then filed another lawsuit in federal court against the directors of the defendant corporation, alleging that the defendant directors had voted to continue sales with the purpose of rendering the company insolvent in the event that the plaintiff was successful in its patent infringement suit. The Court found that the plaintiff was attempting "to make the defendants answerable for the judgment already obtained," 217 U.S. at 498, 30 S. Ct. at 601-02, and held that the case did not fall within the federal court's ancillary jurisdiction. *Id.* at 499, 30 S. Ct. at 602.

Beecher is distinguishable from the case before this Court. *Beecher* dealt with litigation that was truly independent from the prior litigation. Thomas' effort to pierce the corporate veil is not independent of his prior

litigation. As the Fourth Circuit noted, "an attempt to pierce the corporate veil is necessarily subsidiary to some primary cause of action." 39 F.3d at 500. By its very nature, an attempt to pierce the corporate veil cannot be independent of the primary cause of action.

Nor is the Fourth Circuit's decision in conflict with *Kokkonen*. As Peacock himself concedes, *Kokkonen* is not controlling. *Kokkonen* addresses the federal court's jurisdiction to enforce a settlement agreement from a prior federal case. The litigation over the settlement agreement was for breach of a contract and was purely independent from the prior federal case. In *Kokkonen*, the Court noted that

> Generally speaking we have asserted ancillary jurisdiction (in the very broad sense in which that term is sometimes used) for two separate, though sometimes related, purposes: (1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully that is, to manage its proceedings, vindicate its authority, and effectuate its decrees.

114 S. Ct. at 1676 (citations omitted). As to the first purpose enunciated by *Kokkonen*, by its very nature an attempt to pierce the corporate veil is factually dependent upon the earlier claims under ERISA. As to the second purpose for ancillary jurisdiction, by attempting to pierce the corporate veil, Thomas is clearly asking the federal court to effectuate its decree in the earlier action. This is the type of situation envisioned by the Court in *Kokkonen* as warranting the exercise of ancillary jurisdiction:

> "The situation would be quite different if the parties' obligation to comply with the terms of the settlement agreement had been made part of the order of dismissal—either by separate provision (such as a provision 'retaining jurisdiction' over the settlement agreement) or by incorporating the terms of the settlement agreement in the order. In that event, a

> breach of the agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would therefore exist."

Id. at 1677. That is close to the situation presented here. The district court found that Peacock failed to observe the corporate form and deliberately siphoned off Tru-Tech's assets with the specific intent and purpose of defeating the collection of the judgment against Tru-Tech. Clearly, the federal courts may exercise jurisdiction over an action to pierce the corporate veil in order to hold liable one who has been actively and purposefully attempting to defeat a legitimate effort to collect a lawful judgment. To conclude otherwise would cast into doubt a court's ability to vindicate its authority and to effectuate its decrees.

II. THERE IS NO MEANINGFUL SPLIT IN THE CIRCUITS CONCERNING FEDERAL ANCILLARY JURISDICTION OVER ACTIONS TO PIERCE THE CORPORATE VEIL IN ORDER TO COLLECT PRIOR JUDGMENTS UNDER ERISA.

Peacock cites *Sandlin v. Corporate Interiors, Inc.*, 972 F.2d 1212 (10th Cir. 1992), *Sederquist v. Court*, 861 F.2d 554 (9th Cir. 1988), *Berry v. McLemore*, 795 F.2d 452 (5th Cir. 1986), *Redding Ford v. California State Bd. Of Equalization*, 722 F.2d 496 (9th Cir. 1983), *Fidelity & Casualty Co. v. Reserve Ins. Co.*, 596 F.2d 914 (9th Cir. 1979), and *National Westminster Bank U.S.A. v. Cheng*, 751 F. Supp. 1158 (S.D.N.Y. 1990) as cases demonstrating a split in the circuits. The facts of these cases are distinguishable from the facts currently before the Court. Not one of those cases deals with an effort to pierce the corporate veil under ERISA.

Sandlin actually supports the Fourth Circuit's decision to find ancillary jurisdiction. Although the Tenth Circuit found no adequate basis for ancillary jurisdiction when it applied the *Beecher* standard to the facts before it, the court noted that ancillary jurisdiction may well be found

if the alter ego claims were more closely connected to the underlying claim. Furthermore, the court indicated that ancillary jurisdiction may be based upon a successor theory if the plaintiff could allege "post-judgment transfers of property." 972 F.2d at 1217 (citations omitted). The facts that the Tenth Circuit foresaw as being able to provide ancillary jurisdiction exist in this case. Thomas' allegations that Peacock was the alter ego for Tru-Tech are irreversibly bound to the merits of the initial litigation and involve post-judgment transfers of property in an effort to defeat collection of the initial judgment.

Nor can it be said that *Berry* is in direct conflict with the Fourth Circuit's decision. *Berry* involves a garnishment action brought against the alleged indemnitors of a judgment debtor. The sole connection between the alleged indemnitors and the initial litigation was an indemnity contract with the defendants in the initial case. The alleged indemnitors played no role in the initial litigation. Such cannot be said about Peacock and the initial litigation brought by Thomas.

Peacock argues that the Second Circuit should also be counted among the circuits in direct conflict with the Fourth Circuit's ruling. He reaches this conclusion on the basis, not of a case decided by the Second Circuit, but on a case decided by the district court in the Southern District of New York. *National Westminster Bank,* like the case before this Court, involves an effort to pierce the corporate veil in order to collect a judgment. The district court found no nexus between the original litigation and a subsequent veil-piercing action, and, therefore, found no ancillary jurisdiction. Even if this decision is at odds with the decision rendered by the Fourth Circuit, it is unreasonable to suggest that, on the basis of this one decision from a district court, the Second Circuit is at odds with the Fourth Circuit. Peacock indicates that the decision in *National Westminster Bank,* standing alone, is indicative of the Second Circuit's position be-

cause the principle relied upon by the district court was derived from the Second Circuit's opinion in *Manway Constr. Co. v. Housing Auth. Of the City of Hartford,* 711 F.2d 501 (2d Cir. 1983). As Peacock notes, however, *Manway* involves totally different facts from this case. *National Westminster Bank* simply cannot predict the position the Second Circuit will take when presented with a veil-piercing action under ERISA to collect a prior judgment.

Likewise, it is ludicrous to suggest that the Fourth Circuit is at odds with the Ninth Circuit on this issue considering that the Ninth Circuit held in *Blackburn Truck Lines v. Francis,* 723 F.2d 730 (9th Cir. 1984), that the federal court had jurisdiction over a suit brought to pierce the corporate veil in order to reach the owners of bankrupt corporations in order to collect a prior judgment.

III. IT WOULD BE PREMATURE FOR THIS COURT TO ADDRESS THE ISSUE OF ANCILLARY JURISDICTION OVER AN ACTION TO PIERCE THE CORPORATE VEIL IN ORDER TO COLLECT A PRIOR JUDGMENT UNDER ERISA.

Granting Peacock's petition would be premature. First of all, there simply have been too few cases decided which address this issue. In his efforts to demonstrate a split in the circuits, Peacock has cited cases which are not close enough factually to warrant comparison. This is not merely a case to collect a judgment; it is an action to pierce the corporate veil to collect a judgment in an ERISA action. Opinions which examine the issue of ancillary jurisdiction in litigation brought to collect prior judgments, but not involving attempts to pierce the corporate veil under ERISA, simply do not address the narrow issue in this case.

Furthermore, few courts have had an opportunity to address this issue since 28 U.S.C. § 1367, the statute

codifying ancillary and pendent jurisdiction, went into effect on December 1, 1990. Even if this Court were to determine that a significant split in the circuits exists on the issue of ancillary jurisdiction, there is no way of knowing at this time whether the split would remain once courts have had an opportunity to apply § 1367. This new statute may well result in greater uniformity in the circuits for all issues dealing with what used to be known as pendent and ancillary jurisdiction. Until more appellate courts are confronted with actions to pierce the corporate veil in order to collect a judgment in an ERISA action and until more courts have had an opportunity to apply and interpret 28 U.S.C. § 1367, the issue presented to this Court is simply not ripe for consideration. It would be premature for this Court to grant Peacock's petition.

IV. THE FOURTH CIRCUIT'S DECISION TO APPLY FEDERAL COMMON LAW VEIL-PIERCING STANDARDS IS NOT IN CONFLICT WITH THIS COURT'S DECISIONS IN *MERTENS* OR *MACKEY*, NOR IS THERE CONFUSION ABOUT VEIL-PIERCING UNDER ERISA IN THE CIRCUIT COURTS.

In *Mertens*, the Court held that ERISA does not provide for actions seeking monetary damages against non-fiduciaries. The Fourth Circuit's decision does not conflict with this holding. Thomas is not engaging in an independent action for monetary damages; he is engaging in an equitable action to satisfy a prior judgment. Furthermore, as discussed above, the veil-piercing action is dependent upon the prior litigation. It is not an independent action at all.

Nor does the Fourth Circuit's decision conflict with *Mackey*. Peacock relies heavily upon the statement in *Mackey* that "ERISA does not provide an enforcement mechanism for collecting judgments won" in actions brought against plans by proported beneficiaries or in

actions brought by general creditors of the plan. 486 U.S. at 833, 108 S. Ct. at 2187. As the Fourth Circuit noted, however, Peacock's reliance upon this statement is misplaced. *Mackey* does not preclude the application of a federal common law veil-piercing rule in ERISA actions. An attempt to pierce the corporate veil is not a mere enforcement mechanism for collection of a judgment. Thomas' action seeks to apply the general purposes and principles of ERISA to pierce Tru-Tech's corporate veil in order to hold Peacock liable for the actions of his alter ego. The fact that this case is not a mere collection action is brought home by the realization that a collection action under state law may yet have to be brought against Peacock to collect the judgment against him if the Fourth Circuit's decision stands.

Finally, Peacock argues that there is a "broad and continuing confusion" over piercing the corporate veil in ERISA actions. There is no such confusion. The courts are in consensus that it is proper to pierce the corporate veil to enforce a judgment when there is evidence of wrongdoing and a failure to observe the corporate form. The cases Peacock cites demonstrate this. In *International Brotherhood of Painters and Allied Trades Union v. Kracher*, 856 F.2d 1546 (D.C. Cir. 1988), the court concluded its opinion by emphatically stating: "[w]e stress again that this case involves no claim of alter ego or conduct that might result in the necessity to pierce the corporate veil." *Id.* at 1550, n.28. In *Connors v. P & M Coal Co.*, 801 F.2d 1373 (D.C. Cir. 1986), the court noted that in general "shareholders and officers may be held personally liable for their corporations' obligations under ERISA if they have acted as the alter egos of their corporations or otherwise met the requirements that justify piercing the corporate veil under traditional common law principles." *Id.* at 1378. In *Operating Engineers Pension Trust v. Reed*, 726 F.2d 513 (9th Cir. 1984), the court recognized that an individual should be held personally liable for trust fund obligations of a

corporation controlled by that individual only if there has been a failure to observe the proper corporate form, and there is fraud involved. *Id.* at 515. Clearly these cases are not in conflict with the Fourth Circuit's decision. Courts are not reluctant to pierce the corporate veil when they are confronted with fraud and injustice. See *Alman*, 801 F.2d 1 (1st Cir. 1986).

CONCLUSION

Review by this Court of the Fourth Circuit's decision would be unwarranted and premature. There currently exists no significant conflict between the Fourth Circuit's decision and the decisions of this Court and other circuits. Furthermore, the impact of 28 U.S.C. § 1367 has yet to be felt on the issues presented by this case.

Respectfully submitted,

J. KENDALL FEW
(Counsel of Record)
JOHN C. FEW
MARGARET A. CHAMBERLAIN
FEW & FEW, P.A.
Post Office Box 10085
850 Wade Hampton Boulevard
Greenville, SC 29603
(803) 232-6456

JAMES R. GILREATH
Post Office Box 2147
110 Lavinia Avenue
Greenville, SC 29602
(803) 242-4727
Attorneys for Respondent
Jack L. Thomas

May 1, 1995